YEOW BOON KEE

v.

TIMBALAN MENTERI DALAM NEGERI, MALAYSIA & ANOR.

HIGH COURT, KUALA LUMPUR
DATUK L.C. VOHRAH J.
[CRIMINAL APPLICATION
NO. 44-32 TAHUN 1992]
22 APRIL 1993

INTERPRETATION OF STATUTES: Section 3(2)(c) Dangerous Drugs (Special Preventive Measures) Act 1985 - Report not addressed to designated officer - Report addressed to Inspector General - Whether breach of the provisions of s. 3(2)(c).

EVIDENCE: Admissibility of certified true copy of report - Tendered by designated officer - Reporting officer away from the country - Whether photostat copy of the report hearsay evidence and not receivable in evidence - Whether there was gap in documentary evidence adduced to show lawful authorisation for detention.

The applicant was detained pursuant to the provisions of s. 3 of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act). Counsel for the applicant contended that there had been an infringement of the provisions of the Act because the report required to be prepared under the Act was addressed not to the designated officer *per se* but to the Inspector General.

Counsel further contended that the contents of the photostat copy of the report exhibited to the affidavit of the designated officer represented hearsay evidence and was therefore not receivable in evidence. In consequence, argued Counsel, there was a gap in the documentary evidence which had been adduced to show lawful authorisation for the applicant's detention under the relevant provisions of s. 3 of the Act.

Held:

[1] The designated officer had affirmed that he had received the report and had given due consideration to its contents and it was only after that that he submitted his report, under the second limb of s. 3(2)(c) of the Act, to the Minister. There is nothing in the Act to suggest that the report must be addressed specifically to the designated officer. It is merely a matter of form that correspondence in government departments is normally addressed to the head of department and the report in this case conformed with the general administrative practice.

[2] It was clear that the designated officer did receive and apply his mind to the report, as required by the provisions of the Act, and as conceded by Counsel for the applicant and there was compliance with the provisions of s. 3(2)(c) of the Act.

[3] The report tendered by the designated officer was a public document within the meaning of s. 74(a)(iii) of the Evidence Act 1950 and its contents were provable by secondary evidence by means of a certified true copy by virtue of the provisions of s. 65 of that Act.

[4] There was no dispute that the report exhibited had been certified in proper form as a true copy of the report made by the reporting officer and as such was receivable in evidence in proof of its contents. There was therefore no break in the chain of evidence relating to the authorisation for the detention under the relevant provisions of the Act.

[Application dismissed].

Cases referred to:

Lee Choon Yoon v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor. Criminal Appeal No. 05/187/90 ***(foll)***

Legislation referred to:

Dangerous Drugs (Special Preventive Measures) Act, 1985, ss. 3(1)(2), 6(1)
Emergency (Public Order and Prevention of Crime) Ordinance, 1969, s. 3(3)(c)
Evidence Act 1950, ss. 65, 74(a)(iii)

For the applicant - Karpal Singh; M/s. Karpal Singh & Co.
For the respondent - Mahmud bin Haji Abdullah, FC

JUDGMENT

L.C. Vohrah J:

This application No. 44-32-92 has been heard together with 11 other applications, namely applications No. 44-29-92, No. 44-30-92, No. 44-31-92, No. 44-33-92, No. 44-39-92, No.44-41-92, No. 44-45-92, No. 44-49-92, No. 44-50-92, No. 44-62-92 and No. 44-63-92, as it involves two points, one of which is common to

all the 12 applications. It has been agreed by all parties that the decision on the common point in this application will be binding on the other 11 applications.

The common point arises out of the construction to be placed on the provisions of s. 3(2)(c) of the Dangerous Drugs (Special Preventive Measures) Act, 1985 ("the Act"). The relevant provisions read as follows:

> 3(1) Any police officer may, without warrant, arrest and detain, for the purpose of investigation, any person in respect of whom he has reason to believe there are grounds which could justify his detention under subsection (1) of s. 6.
>
> (2) Any person arrested and detained under this section may be detained in police custody for a period not exceeding sixty days without an order of detention having been made in respect of him under subsection (1) of s. 6:
>
> Provided that -
>
> (a) ...
>
> (b) ...
>
> (c) he shall not be detained for more than fourteen days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector-General or to a police officer designated by the Inspector-General in that behalf and the Inspector-General or police officer so designated by him, as the case may be, shall forthwith report the same to the Minister.
>
> (3) ...
>
> (3A) ...
>
> (4) ...

It has been conceded by Mr. Karpal Singh, Counsel acting for all the applicants, that in each case the designated officer concerned did receive and apply his mind to the report relating to the circumstances of the arrest and detention prepared by an officer of the required rank as stipulated in s. 3(2)(c) but Mr. Karpal contends that there has nevertheless been an infringement of its provisions because the report was addressed not to the designated officer *per se* but to the Inspector-General. The report in each case is in the standard from and for illustration that in this particular application is reproduced below as follows:

> Pejabat Ketua Polis
> (Cawangan Anti Dadah) **Sulit**
> Polis Di Raja Malaysia **Lampiran 'D'**
> Perak Darul Ridzuan,
> 30000 - Ipoh
>
> Rujukan: PK/CAD/FK/44/85
> Tarikh: 5 December 1989
>
> Ketua Polis Negara
> Polis Di Raja Malaysia
> Kuala Lumpur.
> (u/p: T/P J S J (CAD))
>
> **Laporan Hal Keadaan Penangkapan Dan Penahanan Di Bawah Seksyen 3(2)(c) Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 (Akta 316)**
>
> Bahawasanya saya yang bertandatangan di bawah ini berpuashati bahawa siasatan-siasatan yang perlu ke atas kes terhadap Yeow Boon Kee No. Kad Pengenalan 7223662 (B) yang telah ditangkap di bawah s. 3(1) Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas), 1985 pada 30 November 1989 jam 1000 hrs di Jalan Kelab, Ipoh Perak Darul Ridzuan tidak dapat disempurnakan dalam tempoh 14 hari.
>
> Maka Dengan Yang Demikian, saya dengan ini melaporkan hal keadaan penangkapan dan penahanan orang yang dinyatakan di atas seperti di Lampiran 'A' berkembar (yang diperingkatkan Rahsia) bagi mematuhi kehendak s. 3(2)(c) Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas) 1985 bagi tujuan melanjutkan tempoh penahanannya bagi jangkamasa tambahan selama 46 hari lagi mulai jam 1000 hrs. pada 14 December 1989.
>
> Tarikh : 5 Dec. 1989 Tandatangan : xx
> Masa : 0910 Hrs.
> Nama Penuh : Abd. Ghani bin Salleh
> Pangkat : TPP
> Ibu Pejabat Polis : CAD Ipoh
> Sulit

Mr. Karpal Singh's complaint is that since the report under the first limb of s. 3(2)(c) should have been brought to the attention of either the Inspector-General himself or to a police officer designated by him, the fact that it had been addressed to the Inspector-General for the attention of some officer other than the Inspector-General indicated that more than one mind had been applied to the report and

this infringed the said provisions. I find no merit in this complaint. The designated officer in each case has affirmed that he had received the report and had given due consideration to its contents and it was only after that that he submitted his report under the second limb to the Minister. There is nothing in these provisions to suggest that the report must be addressed specifically to the designated officer. It is merely a matter of form that correspondence in government departments is normally addressed to the head of the department and this report conforms with this general administrative practice. In my view, the important question to be determined is whether the designated officer did receive and apply his mind to the report and the answer to this question is positively in the affirmative as conceded by Mr. Karpal Singh. I am therefore satisfied that there has been compliance with the provisions of s. 3(2)(c) of the Act.

The second point is peculiar only to this application. It concerns the admissibility under the said provisions of a certified true copy of the above report tendered by the designated officer because the reporting officer was away from the country and could not himself depose to the fact that he was the maker of the report. The contention of Mr. Karpal Singh is that since the reporting officer was only away in nearby Indonesia arrangements could easily have been made to procure his affidavit deposing to the fact that he had reported the circumstances of the arrest and detention to the designated officer and that accordingly the contents of the photostat copy of the report exhibited to the affidavit of the designated officer represented hearsay evidence and were therefore not receivable in evidence. That being the case, argues Mr. Karpal Singh, there is a gap in the documentary evidence which has been adduced to show lawful authorisation for the applicant's detention under the relevant provisions of s. 3 of the Act. There is however no dispute that the report exhibited has been certified in proper form as a true copy of the report made by the reporting officer and in this regard, my attention has been drawn by Encik Mahmud bin Haji Abdullah, Federal Counsel acting for the respondents, to an unwritten decision of the Supreme Court (Coram: Hashim Yeop A. Sani CJ (Malaya), Harun Hashim SCJ and LC Vohrah J) in Criminal Appeal No. 05/187/90 (*Lee Choon Yoon v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor*, dealing with a similar point under near identical provisions in s. 3(3)(c) of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969, wherein it was decided that a report submitted by the designated officer to the Minister under the second limb of the provisions of s. 3(3)(c) of the Ordinance was a public document within the meaning of s. 74(a)(iii) of the Evidence Act, 1950 and that its contents were provable by secondary evidence by means of a certified true copy by virtue of the provisions of s. 65 of that Act. By the same token, the certified true copy of the reporting officer's report tendered under the first limb of the said provisions of the Act must be receivable in proof of its contents. There is therefore, in my view, no break in the chain of evidence relating to the authorisation for the detention under the relevant provisions.

In the result, all the twelve applications must be dismissed.